

# EXHIBIT 120

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS  
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4 \_\_\_\_\_  
5 STUDENTS FOR FAIR ADMISSIONS, INC.,  
6 Plaintiff,

7 v.

No. 1:14-cv-14176

8 PRESIDENT AND FELLOWS OF  
9 HARVARD COLLEGE  
10 (HARVARD CORPORATION),  
11 Defendant.  
12 \_\_\_\_\_  
13  
14  
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16 VIDEO DEPOSITION of WILLIAM FITZSIMMONS  
17 Boston, Massachusetts  
18 August 3, 2017  
19  
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21  
22

23 Reported by:

24 Dana Welch, CSR, RPR, CRR, CRC

25 Job #127104

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2 kind of thing for all minority students.

3 Again, the -- one of Anne's  
4 responsibilities is to ensure that, that as much in  
5 addition that we do in recruiting -- so this isn't  
6 limited to what I've mentioned already. But the  
7 thrust of your question that was that -- Anne's  
8 responsibilities, as you can see, are very  
9 important because one of the things you want to  
10 make sure is that with such a broad and vigorous  
11 outreach that it is well coordinated. So that's,  
12 you know, to give you some idea what -- now, she  
13 also is a -- has some admissions responsibilities  
14 as well, so her job is not simply to help us  
15 coordinate recruitment.

16 Q. Does she read files, for example?

17 A. Yes.

18 Q. Just as the other directors do as well?

19 A. Yes.

20 Q. She participates in the subcommittee and  
21 committee meetings?

22 A. Yes.

23 Q. You described her responsibilities largely  
24 with respect to, I think you called them, outreach  
25 initiatives. By outreach do you mean efforts to

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2 Q. Yes. Other than the way in which it  
3 purchases testing results, are there any other  
4 distinctions made between how the UMRP goes about  
5 recruiting students of Asian descent versus  
6 students of Hispanic descent, for example?

7 MS. ELLSWORTH: Objection.

8 A. Well, for example, the Asian American  
9 undergraduate minority recruiters would recruit  
10 Asian students -- Asian Americans students from all  
11 backgrounds and at a wide variety of testing  
12 levels.

13 Q. And is it your testimony that any Asian  
14 student who reaches out to Harvard for information  
15 will be added to the Asian UMRP group?

16 A. I believe that's the case.

17 Q. What else does the UMRP program do to  
18 recruit minority students?

19 A. They will send out communications of  
20 various kinds. They will give information sessions  
21 to visiting groups of students from various  
22 backgrounds. They may also even do some middle  
23 school outreach to encourage students in middle  
24 schools to take strong courses in high school and  
25 consider college later on. There are lots of

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2 things they do.

3 Q. Other than people who contact Harvard and  
4 the test result purchases, how do they go about  
5 identifying the targets of that recruitment?

6 MS. ELLSWORTH: Objection.

7 A. Some of them, as an example, will go back  
8 to their home towns during school breaks, for  
9 example, or attend summer programs in various  
10 locations. So there are a variety of things that  
11 they would do.

12 Q. Do you know, for example --

13 MR. STRAWBRIDGE: Strike that.

14 Q. Did you say that UMRP, current students at  
15 Harvard who are UMRP recruiters, did you say that  
16 they are -- are they assigned students of the same  
17 ethnic background to recruit?

18 A. Generally.

19 Q. Why is that?

20 A. Oftentimes in recruiting, if you can  
21 envision yourself in -- with the person you are  
22 talking to, it can be helpful in making a case to a  
23 student that Harvard would be a comfortable place  
24 for a potential Harvard student.

25 Q. Do you know how many UMRP recruiters there

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2 are?

3 A. Depending on the time of year, there can  
4 be -- my best recollection, possibly 15 to 20  
5 different recruiters.

6 Q. Are they paid?

7 A. Yes.

8 Q. Okay. Do you know how many Asian UMRP  
9 recruiters there are?

10 MS. ELLSWORTH: Objection. I'll remind  
11 the witness not to disclose the names of any  
12 current students at Harvard. But you may answer  
13 the question.

14 A. We have about the same number for each  
15 group.

16 Q. So it's equally divided, basically, among  
17 Hispanic --

18 A. Best of my recollection.

19 Q. Is that on purpose?

20 A. We feel it's important to get outstanding  
21 students from all of these ethnic backgrounds.

22 Q. So you want to evenly divide your efforts?

23 MS. ELLSWORTH: Objection.

24 A. It's one way to start.

25 Q. Do you provide annual performance

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2 characteristics of the class?

3 A. It would use the new methodology.

4 Q. And does Harvard use the new methodology  
5 when it prepares its own internal reports of the  
6 admissions class?

7 MS. ELLSWORTH: Objection.

8 A. Our office, for its internal purposes,  
9 would use the new methodology.

10 Q. All right. You know what a one- --

11 A. We would also be aware of the IPEDS.

12 Q. Do you know what a one-pager is?

13 A. I do.

14 Q. What's a one-pager?

15 A. It would be a very incomplete but rough  
16 idea of statistics regarding a class, typically  
17 comparing one year to the next.

18 Q. And one-pagers are actually reports that  
19 are generated in the midst of the admissions  
20 process, correct?

21 MS. ELLSWORTH: Objection.

22 A. Generally, yes.

23 Q. Sometimes on a daily basis during the  
24 committee process?

25 MS. ELLSWORTH: Objection.

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2 A. I certainly don't request daily  
3 one-pagers. I don't know if they're produced daily  
4 or not.

5 Q. On the one-pagers, is it IPEDS or the new  
6 methodology?

7 MS. ELLSWORTH: Objection.

8 A. In recent years it would be both.

9 Q. Okay. Did it used to be the old  
10 methodology?

11 A. It could include all three.

12 Q. Did you adopt the new methodology after  
13 IPEDS was introduced?

14 A. I don't remember the exact timing.

15 Q. I guess -- so that brings me back to the  
16 original question, which is if Harvard has created  
17 various methodologies that diverge from the federal  
18 reporting methodology, then why doesn't Harvard  
19 include the more specific granular racial identity  
20 information on its internal report?

21 MS. ELLSWORTH: Objection.

22 A. That's a very different thing from the new  
23 methodology and very different from IPEDS.

24 Q. What's a very different thing?

25 A. If I understand, you're asking why we



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2 with staff members using such things before. But  
3 I'm very familiar with the term.

4 Q. Do you consider yourself an expert in  
5 statistical analysis?

6 A. No, no.

7 Q. Do you consider yourself reasonably  
8 informed with modern statistical techniques?

9 MS. ELLSWORTH: Objection.

10 A. I'm no expert, but I'm reasonably well  
11 informed.

12 Q. Do you subscribe to any journals that  
13 cover the statistics field?

14 MS. ELLSWORTH: Objection.

15 A. Not that is simply devoted to statistics  
16 that I'm aware of.

17 Q. Have you taken any educational courses on  
18 statistics in the last 30 years?

19 A. No.

20 Q. You referred earlier to race-neutral  
21 alternatives.

22 Do you remember that?

23 A. Yes.

24 Q. Prior to November 2014, what studies --

25 MR. STRAWBRIDGE: Strike that.

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2 Q. Had Harvard College conducted any studies  
3 as to whether there were race-neutral alternatives  
4 that could be adopted instead of using race in the  
5 admissions process?

6 MS. ELLSWORTH: I'll just remind the  
7 witness in answering the question not to disclose  
8 any communications with counsel. You may answer  
9 the question without disclosing that information.  
10 You may do so.

11 Q. To be clear, my question is a yes-or-no  
12 question: Had Harvard done this?

13 MS. ELLSWORTH: And I'll also object to  
14 the form.

15 A. A formal study?

16 Q. Any study.

17 A. I'm a little unclear what you mean by a  
18 study. So it's hard for me to answer yes-no to  
19 that.

20 Q. Had it ever analyzed in any way, shape, or  
21 form, whether or not there were alternatives to the  
22 use of race in the admissions process that would  
23 achieve its educational interest in diversity?

24 MS. ELLSWORTH: Objection and the same  
25 warning.

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2 A. And you're asking prior to 2014?

3 Q. Prior to November 2014.

4 A. We have certainly been aware of the issue  
5 of race-neutral admissions for a very long time.  
6 It's been out in the public, you know, for a very  
7 long time.

8 And we have therefore conducted our  
9 recruiting and done a wide variety of things that  
10 people now use the term -- they'll use the term  
11 race-neutral alternatives, and I know that --  
12 I think it was in interrogatory number 11 we  
13 outlined a -- I could go through them if you want,  
14 but a wide variety of procedures, including robust  
15 financial aid, all the changes that we had in  
16 recruiting, giving up early admission to try to,  
17 you know, see if any of these things would make a  
18 difference.

19 And so we have worked hard, you know, to  
20 sort of see, you know, as -- to do everything  
21 possible to recruit people in every conceivable way  
22 that we heard about, anyway, that might help  
23 produce the kind of diverse applicant pool, and  
24 therefore we hope, ultimately, the diverse college  
25 that we aspire to have.

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2 And nothing worked other than our ability  
3 in the end, despite all of these massive changes  
4 that we've made over the past -- especially in the  
5 past 10 or 15 or 20 years and even going up until  
6 the, you know, the past couple of years, with  
7 further changes on financial aid and further  
8 electronic outreach.

9 And in the end, we still believe it is in  
10 Harvard's vital educational interest to be able to  
11 use race as one factor among many as we admit our  
12 students.

13 Q. At any point in doing all these other  
14 activities you described that are referenced in the  
15 interrogatory, did you stop using race in the  
16 admissions process?

17 A. No.

18 Q. At any point did you perform an analysis  
19 to see what you thought would happen if you stopped  
20 using race in the admissions process?

21 MS. ELLSWORTH: Objection. Again I'll  
22 remind the witness not to disclose any actions  
23 taken at the direction of counsel or information  
24 learned from counsel in answering the question.

25 A. Can you repeat the question again?

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2 Q. The question, again, this is for the time  
3 frame prior to the filing of this lawsuit in  
4 2000- --

5 A. Oh, I see, okay. Before --

6 Q. Yeah. Did you -- yes or no? Had you done  
7 any analysis as to what would happen if Harvard  
8 stopped using race in the admissions process?

9 MS. ELLSWORTH: Objection.

10 A. It's a hard question to answer. Just say  
11 it again. Just frame it again for me.

12 MR. STRAWBRIDGE: Why don't I ask the  
13 reporter to read this one back.

14 THE WITNESS: Okay. Sorry.

15 (Preceding question read.)

16 A. The answer would technically be no, but we  
17 analyze every year what it is we have done. You  
18 know, there was no formal study, but we review  
19 carefully what we do every year and we, again,  
20 believed every year, especially after all the  
21 massive changes that we've made, that it was still  
22 vital for us to be able to use race and ethnicity  
23 in the admissions process.

24 Q. And when you say you look at what you did  
25 and made this decision, is that a formal process?

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2 MS. ELLSWORTH: Objection.

3 A. I'm not sure what you mean by formal.

4 Q. Is there a meeting where you sat down and  
5 you looked at everything you did and you openly  
6 discussed whether or not it's time to stop using  
7 race in the admissions process?

8 MS. ELLSWORTH: Objection.

9 A. We always examine, you know, some cases  
10 just simply with our staff, but we're always open  
11 to improving our process in any way we can and we  
12 always will talk about ways to improve the process.  
13 But I'm not sure that answers your question.

14 Q. I don't believe it does.

15 A. Could you --

16 Q. Yeah. Did you have any formal discussion  
17 where you specifically addressed the question  
18 should we stop using race in the admissions  
19 process?

20 MS. ELLSWORTH: Objection and, again, I'll  
21 remind the witness not to disclose communications  
22 with counsel in answering the question.

23 A. I think we see just in the way our process  
24 works any time we look at it that we see in every  
25 aspect of our work that using race is absolutely

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2 essentially to achieving the educational mission of  
3 the college, that we've seen no case to be made for  
4 not using race and ethnicity in the admissions  
5 process.

6 Q. Do you remember specifically discussing  
7 whether there was a case to be made prior to the  
8 filing of this lawsuit?

9 MS. ELLSWORTH: Objection, same reminder  
10 in terms of communications with counsel.

11 A. You know, again, I think it's a  
12 hypothetical question that I'm having trouble  
13 parsing.

14 Q. No, I'm sorry. It's not a hypothetical  
15 question. I'm asking you do you remember having  
16 this discussion?

17 A. Which discussion?

18 Q. Whether or not it was time or Harvard  
19 should consider to stop using race in the  
20 admissions process?

21 MS. ELLSWORTH: Objection, asked and  
22 answered. And I'll remind the witness not to  
23 disclose communications with counsel in whatever  
24 response that you may choose to give.

25 THE WITNESS: I think maybe -- could I --

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2 is there -- it possible for me to talk with  
3 Counsel.

4 MS. ELLSWORTH: We can halt on a privilege  
5 issue here.

6 MR. STRAWBRIDGE: Well, I want to make  
7 sure --

8 THE WITNESS: I'm not -- I mean, I just  
9 want to make sure I understand the question.

10 MR. STRAWBRIDGE: That's fine. Let's try  
11 this on the record first. If we need to go off the  
12 record, we can.

13 Q. The question is just yes or no: Do you  
14 remember having these discussions?

15 I'm not asking you what the substance of  
16 the discussions were. I'm just asking you, prior  
17 to the filing of this lawsuit, do you remember  
18 having such a discussion, the specific topic of  
19 which was, "Should we stop using race in the  
20 admissions process?"

21 MS. ELLSWORTH: So before you answer the  
22 question, please let me look at this.

23 I think this question has been asked and  
24 answered.

25 MR. STRAWBRIDGE: It has not been



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2 answered.

3 MS. ELLSWORTH: Again, I'm going to again  
4 remind the witness not to disclose communications  
5 with counsel.

6 If you can answer the question, you may do  
7 so.

8 A. I think I'm having trouble -- I think I've  
9 answered it, but let me just try -- so as we made  
10 all these massive changes that we outlined in  
11 interrogatory 11, certainly part of that, if this  
12 is part of what you're thinking about, is that  
13 how -- we were, you know, trying to achieve the  
14 best possible applicant pool and ultimately make it  
15 possible to admit, you know, the best student body  
16 we could admit.

17 And, you know, I think certainly anybody  
18 in our field, you know, been aware for a long time  
19 of the concept of race-neutral, and we thought that  
20 all -- many -- all those items that we -- I won't  
21 go through them all because I know you have them in  
22 interrogatory 11, you know, which certainly  
23 provides lots of evidence that we certainly were  
24 aware of the concepts and were doing everything  
25 possible.

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2 And in the end, did the subject or the  
3 term ever come up in conversations with staff or  
4 with others? I'm sure that it probably did. I  
5 don't remember it specifically. But in the end I  
6 think we were, you know, we simply, you know, there  
7 was no evidence after making all these changes that  
8 cost Harvard many, many millions of dollars -- you  
9 know, our financial aid budget has rocketed skyward  
10 since we've made many of these changes and so on,  
11 in all kinds of different ways -- and still we feel  
12 it's absolutely vital to be able to use race and  
13 ethnicity as we both recruit and assemble and then  
14 admit the best possible class every year.

15 Q. Do I understand your testimony to be you  
16 do not remember any specific discussion about  
17 whether these changes meant that Harvard could stop  
18 using race in the admissions process?

19 MS. ELLSWORTH: Objection.

20 A. I don't remember a specific formal  
21 discussion on the subject, but because it's so much  
22 a part of what all colleges do, it was certainly  
23 one concept that has certainly informed the work  
24 we've done over the years.

25 Q. Do you remember any specific informal

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2 discussion on the topic?

3 MS. ELLSWORTH: Objection.

4 A. Again, it's so much a part of what we do,  
5 I don't remember the specific -- I don't have a  
6 scene in my mind that would, you know, where this  
7 topic was discussed. But it's such an integral  
8 concept in college admissions.

9 Q. Were any of these endeavors that you just  
10 described adopted with the goal of ceasing the use  
11 of race in the admissions process?

12 MS. ELLSWORTH: Objection.

13 A. Many of these were simply designed to  
14 allow us to further our efforts to get the best  
15 possible class that we could across the board, and  
16 that would include, you know, getting the strongest  
17 minority students that we could get from every  
18 background.

19 Q. Were they adopted with the goal of ceasing  
20 the use of race in the admissions process?

21 MS. ELLSWORTH: Objection.

22 A. The goal was really to get the best class  
23 that we could get and get the class that would be  
24 comprised of the best educators of others.

25 Q. But was one of the goals to stop using

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2 race in the admissions process?

3 MS. ELLSWORTH: Objection.

4 A. One of the -- certainly many of the --  
5 I won't go again, go through the long list again,  
6 but we were making what I would call a massive  
7 good-faith effort to do everything that seemed to  
8 be effective that we hear about, around and about,  
9 to gather together in what some would term a  
10 race-neutral process.

11 And ultimately it didn't work because in  
12 the end we felt we still needed to use race and  
13 ethnicity as part of what we do.

14 Q. Are you aware of any written document  
15 prior to the filing of this lawsuit that  
16 specifically looked at any of the alternatives  
17 you're describing as, whether they would be  
18 sufficient to achieve diversity such that Harvard  
19 could stop using race?

20 MS. ELLSWORTH: Objection. That's a  
21 yes-or-no question. You may answer that question  
22 yes or no.

23 THE WITNESS: Does it have to be yes  
24 or no?

25 MS. ELLSWORTH: Yes. Don't disclose

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2 communications with counsel.

3 THE WITNESS: I -- I'm -- excuse me --  
4 no -- excuse me.

5 MS. ELLSWORTH: Just don't disclose  
6 information learned from counsel or communications  
7 with counsel in answering the question. But go  
8 ahead.

9 A. Could you ask the question again?

10 Q. Are you aware of any document that looks  
11 at any of these efforts that you've just described  
12 as being undertaken to determine whether Harvard  
13 could stop using race in the admissions process  
14 prior to the filing of this lawsuit?

15 A. There certainly had been studies done of  
16 the various steps we've taken. I honestly don't --  
17 you could argue, you know, among other things, that  
18 it -- these kinds of changes, you know, would  
19 certainly be part of a massive good-faith effort to  
20 do anything that seemed reasonable to come up --  
21 what are called race-neutral alternatives.

22 I don't know if that answers your  
23 question. Probably it doesn't.

24 Q. I'm not asking you about what could be  
25 argued. I'm asking is there a document that you're

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2 aware of prior to 2014 that specifically addressed  
3 the question of whether any of these initiatives  
4 could be used instead of race in the admissions  
5 process?

6 A. I don't remember, for example, if Neil  
7 Rudenstine's report did that.

8 Q. Are you aware of any other document other  
9 than possibly Neil Rudenstine's report?

10 A. Not off the top of my head, but...

11 Q. When you undertook these efforts, were you  
12 doing so with an open mind to ceasing the use of  
13 race in the admissions process?

14 MS. ELLSWORTH: Objection.

15 A. We would always have an open mind on  
16 anything. But, again, I think our focus was on  
17 achieving and getting a class that really would be  
18 diverse in all ways, including ethnicity, and  
19 therefore, make it a better educational experience  
20 for people during the four years. But not sure  
21 it's specifically framed the way you would say it.

22 Q. Did you ever -- when you were undertaking  
23 these initiatives that you've described and that  
24 are in the interrogatory response, were you open to  
25 the possibility that the best class could be

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2 achieved without using race in the admissions  
3 process?

4 MS. ELLSWORTH: Objection.

5 A. Again, I think any reasonable person would  
6 have an open mind in receiving any new information  
7 that -- any reasonable person or institution, I  
8 think, would take into account new information.

9 Q. And today your testimony is you can't  
10 imagine what it would take for you to be convinced  
11 that you should stop using race in the admissions  
12 process?

13 MS. ELLSWORTH: Objection.

14 A. That would be true.

15 Q. Was that any different four years ago?

16 A. Four years ago? No.

17 Q. Was it any different three years ago?

18 A. Could you ask the question again? Just  
19 make sure I understand it.

20 Q. Yes.

21 Four years ago, could you imagine evidence  
22 that would change your mind as to whether or not  
23 Harvard should stop using race in the admissions  
24 process?

25 MS. ELLSWORTH: Objection.

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2 A. You know, I think -- again, I think a  
3 reasonable person or reasonable institution would  
4 always keep an open mind about anything. I mean,  
5 new information comes in but that despite massive  
6 efforts that people would reasonably call  
7 race-neutral efforts to make a difference, there's  
8 still no case in our minds that, despite all the  
9 things that we've done that we could achieve our  
10 goal of having a diverse class and an effective  
11 educational experience without using race.

12 Q. You keep saying that these are efforts  
13 that people could reasonably call race-neutral  
14 alternatives. Did you ever call them race-neutral  
15 alternatives at the time you were considering them?

16 MS. ELLSWORTH: Objection.

17 A. I -- certainly in my own mind, we're well  
18 aware of the fact that all of these -- lots of  
19 articles have been written, certainly, that all of  
20 these kinds of things were -- were changes that  
21 would be reasonably labeled race-neutral.

22 Q. Do you ever remember using that label to  
23 describe these specific efforts that were  
24 implemented at Harvard?

25 A. I don't recall specifically.



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2 Q. Do you recall anybody else in the  
3 admissions office using that label specifically to  
4 describe these initiatives prior to the filing of  
5 this lawsuit in 2014?

6 A. I don't have a specific recollection, but  
7 I know I and others were certainly aware that  
8 that's what these things were called by many  
9 people.

10 Q. Are you aware of any formal analysis on  
11 paper that purports to analyze how these could be  
12 used and what the result of them would be instead  
13 of using race?

14 MS. ELLSWORTH: Objection.

15 A. Formal analysis?

16 Q. Something in writing.

17 A. Something that doesn't -- nothing as  
18 specific as what you're describing comes to mind.

19 Q. Does Harvard provide -- has Harvard --  
20 strike that.

21 Since this lawsuit, are you aware of any  
22 such formal analysis?

23 MS. ELLSWORTH: Objection. I'll remind  
24 the witness not to disclose anything learned from  
25 counsel or actions taken at the direction of

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2 counsel in answering the question. If you can  
3 answer the question without disclosing that  
4 information, you may do so.

5 A. I think the answer to that question would  
6 be in the interrogatory regarding -- I believe, if  
7 I understand your question, the Ryan committee and  
8 then the committee that Dean Khurana and Dean Smith  
9 and I are on.

10 Q. Other than the output of that committee,  
11 are you aware of any other analysis that's been  
12 done with respect to race-neutral alternatives?

13 A. At Harvard?

14 Q. At Harvard?

15 MS. ELLSWORTH: Again, I'll give the same  
16 instruction or reminder not to disclose any action  
17 taken at the direction of counsel or communication  
18 of counsel in answering that question. If you can  
19 answer the question without disclosing that  
20 information, you may.

21 A. The question again, I'm sorry.

22 Q. Other than the output of those committees,  
23 are you aware of any formal analysis?

24 A. Not any that immediately come the mind.

25 Q. If you had some time to think about it

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2 would your answer change?

3 MS. ELLSWORTH: Objection.

4 A. I don't know.

5 Q. You are designated as a 30(b)(6) witness  
6 on this topic, right?

7 A. Right. Right.

8 Q. So you did prepare for this deposition to  
9 understand what Harvard had done with respect to  
10 race-neutral alternatives, did you not?

11 A. Yes. And that --

12 Q. Okay. So nothing comes to mind?

13 A. I must -- I -- no, but I could be  
14 informed.

15 Q. Has Harvard considered using geographic  
16 preference in its admissions process as an  
17 alternative to race?

18 MS. ELLSWORTH: Objection and, again, the  
19 same reminder to the witness not to disclose any  
20 actions taken at the direction of counsel or  
21 communications with counsel. If you can answer the  
22 question without disclosing that information, you  
23 may.

24 A. So the question is using geographic  
25 preference as a substitute?

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2 Q. Correct.

3 A. What we know of the diversity of the  
4 country, and as we have -- obviously I've been in  
5 admissions for a very long time -- there has not  
6 been a formal study of such a proposal. But what  
7 we know of the diversity of, within -- and the lack  
8 of diversity, actually, as well, in different parts  
9 of the country, it certainly does not seem  
10 reasonable that that could be a substitute.

11 Q. Has Harvard ever used ZIP Codes to help  
12 identify students who could perform well at Harvard  
13 from under-recruited areas?

14 A. It has been something that we have talked  
15 about and something that we -- that's been used in  
16 some other recruiting pieces as well. I think  
17 including the -- I believe the Hoxby Turner efforts  
18 with the College Board.

19 Q. Do you use those now?

20 A. We're aware of ZIP Code analysis.

21 Q. Do you use ZIP Code analysis now?

22 MS. ELLSWORTH: Objection.

23 A. We have found it to be not particularly  
24 effective. But, again, one piece of information  
25 among many.

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2 Q. And how have you found it? Had you used  
3 it before?

4 MS. ELLSWORTH: Objection. What's the  
5 question, exactly?

6 THE WITNESS: Yeah.

7 Q. Do you use ZIP Code analysis to try to  
8 identify students?

9 A. If you mean a formal analysis, no, but we  
10 would be aware that certain ZIP Codes are, you  
11 know, different one from the other. But there's  
12 also a great deal of, for example, diversity within  
13 ZIP Codes.

14 Q. Have you previously used ZIP Codes to help  
15 identify students who could succeed at Harvard?

16 MS. ELLSWORTH: Objection.

17 A. I'm not sure how the ZIP Code would help a  
18 student succeed at Harvard.

19 Q. Do you recall using College Board  
20 databases to search for kids from ZIP Codes that  
21 were socioeconomically challenged?

22 A. We are exploring that possibility. It is  
23 not a perfect science, by any means.

24 Q. Aside from exploring that possibility, is  
25 that something that you once did before?

1 FITZSIMMONS

2 A. We have had it as part of what we've done,  
3 as I recall.

4 Q. And when was that?

5 A. Within the past few years, I believe.

6 Q. Starting when?

7 A. I don't remember exactly.

8 Q. 2013?

9 A. I don't remember precisely.

10 Q. And has there been a report that analyzes  
11 why using ZIP Codes is not useful, I guess?

12 MS. ELLSWORTH: Objection.

13 A. I believe that Erica Bever had conducted  
14 some research which I believe included ZIP Code.  
15 And if I'm correct in that, which I might not be,  
16 I think we found it to be of some use but rather  
17 limited use.

18 Q. Back in the '80s, did the College Board  
19 have a system that allowed people to search by ZIP  
20 Code for high-performing students?

21 MS. ELLSWORTH: Objection.

22 A. Certainly there was a time in the past  
23 when that was possible, but then it was  
24 discontinued for a long period of time.

25 Q. Do you know when it was discontinued?

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2 A. I don't, off the top of my head.

3 Q. Do you know when it was reinstated?

4 A. Relatively recently. I would say within  
5 the past five or six or seven years.

6 Q. Is that in the form of the College Board  
7 cluster data?

8 A. I believe that's part of what they do.

9 Q. Has Harvard used the College Board cluster  
10 data in its admissions office?

11 A. We're certainly aware of it, and we're  
12 studying it.

13 Q. Have you actually looked at whether it  
14 would allow you to identify a diverse class of  
15 applicants or admittees without -- instead of the  
16 use of race?

17 MS. ELLSWORTH: Objection.

18 A. The analysis has not gone very far at this  
19 point.

20 Q. Has it specifically analyzed what it would  
21 do as an alternative to the use of race?

22 MS. ELLSWORTH: Objection. Again, I'll  
23 remind the witness --

24 THE WITNESS: Not specifically.

25 MS. ELLSWORTH: I'll remind the -- wait,

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2 wait, wait -- not to disclose information learned  
3 from counsel or communications with counsel in  
4 answering the question.

5 A. The question again?

6 MR. STRAWBRIDGE: Can you read it back?

7 (Preceding question read.)

8 MS. ELLSWORTH: Want to put a time frame  
9 on that question, maybe?

10 MR. STRAWBRIDGE: Since the reintroduction  
11 of the socioeconomic cluster data.

12 MS. ELLSWORTH: Again, I'll just remind  
13 the witness not to disclose communications with  
14 counsel when answering the question.

15 A. There's certainly been no definitive  
16 analysis that we have been -- that has come to our  
17 attention that would indicate that that would be  
18 any kind of a reasonable substitute.

19 Q. Has Harvard conducted any nondefinitive  
20 analysis of that question?

21 MS. ELLSWORTH: Objection.

22 A. I don't recall how far Erica -- if that's  
23 one of the things she was working on. And I know  
24 she and I talked about it, whether or not she got  
25 very far on that.



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2 Q. Do you remember when you had these  
3 conversations with Ms. Bever?

4 A. I don't specifically, but she's worked  
5 with us for three years.

6 Q. Do you know if it was at the beginning or  
7 later in your tenure?

8 A. It's hard to say in the always busy --  
9 any three-year period is very busy in our world.  
10 I would guess it was somewhere in the middle, but  
11 that's just a guess.

12 Q. You think it's work she's done since she  
13 came over to the admissions office?

14 A. My guess is yes because it wasn't possible  
15 before then.

16 Q. Has Harvard analyzed whether it could  
17 achieve racial diversity by curtailing or ending  
18 the tip that it gives to legacy admits?

19 MS. ELLSWORTH: Objection.

20 A. Could you repeat that.

21 Q. Has Harvard analyzed whether it could  
22 achieve racial diversity by curtailing the tip or  
23 ending the tip that it gives to legacy admits?

24 MS. ELLSWORTH: Objection.

25 A. Using legacy status as one factor among

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2 A. Not that I can recall.

3 Q. Is there a specific training session that  
4 everyone's required to attend on a regular basis  
5 that reviews what is legally permissible with  
6 respect to the use of race in the admissions  
7 process?

8 MS. ELLSWORTH: Objection.

9 A. That really would be part of the  
10 comprehensive training program.

11 Q. Are you aware that it's specifically  
12 included every year on the training program?

13 MS. ELLSWORTH: Objection.

14 A. The intention of the training program is  
15 to give a comprehensive overview of how to evaluate  
16 an application.

17 Q. Is it your understanding that that  
18 includes specific training on how race should be  
19 used?

20 A. If it isn't in writing, it could well also  
21 be done in discussion.

22 Q. Are you sure that it is?

23 A. I don't know for sure.

24 MS. ELLSWORTH: Objection.

25 Q. Do you take any steps to ensure that it

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2 is?

3 MS. ELLSWORTH: Objection.

4 A. I review very carefully as chair of the  
5 full committee and a chair of one of the large  
6 subcommittees, I look very carefully at what new  
7 staff members -- how they're evaluating  
8 applications as they come through committee.

9 And I also would talk to the chairs of our  
10 various subcommittees to ensure that they believe  
11 that any new staff member understands completely  
12 what it is that we're trying to do.

13 Q. Do you recall any specific discussions  
14 about a staff member using race inappropriately?

15 MS. ELLSWORTH: Objection.

16 A. Not off the top of my head, no.

17 Q. Do you recall any discussions with any  
18 staff members about concerns that race was not  
19 being used consistently with Harvard's guidelines?

20 MS. ELLSWORTH: Objection.

21 A. No specific instances come to mind, but  
22 it's a busy office.

23 Q. When the readers are reading a file, do  
24 they assign it scores?

25 A. Yes.

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2 Q. Will you sometimes provide information to  
3 the committee about the rating that has been  
4 provided to you for this candidate?

5 MS. ELLSWORTH: Objection.

6 A. Yes.

7 Q. Is that information provided in  
8 subcommittee?

9 MS. ELLSWORTH: Objection.

10 A. It could be.

11 Q. How would that information get  
12 communicated to the subcommittee chair for a  
13 subcommittee that wasn't yours?

14 A. I might talk directly to the area person;  
15 I might talk directly to the chair; I might go into  
16 the subcommittee and talk to everyone. It varies.

17 Q. Before the subcommittee process begins,  
18 does each docket receive a target number?

19 A. Yes.

20 MS. ELLSWORTH: Objection.

21 Q. And how is that target number calculated?

22 A. It's the roughest of rough estimates based  
23 on the quality of the applicants the previous year  
24 from that area with the information about number of  
25 applicants, the number of people admitted from that

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2 particular area, which would be a measure of the  
3 quality.

4 And then you would have the information  
5 this year of any variations in the application  
6 numbers. And then, depending on where you are in  
7 the process, you would have the admits so far,  
8 which would be, again, a rough measure of -- this  
9 is on, say, a one-pager as we had talked about  
10 before.

11 So it's a very, very, very rough way to  
12 start, just to -- but because our recruiting is so  
13 comprehensive and because every year we are  
14 writing, as you know, and communicating with  
15 thousands and thousands of applicants in very much  
16 the same way from year to year, we will tend to  
17 have -- from one year to the next, you tend to have  
18 the roughly the same number and then roughly the  
19 same quality from an area.

20 Although, and the reason I use the word  
21 rough, very rough to describe the targets is that  
22 until you actually read the applications, you --  
23 and go through committee, you don't really know  
24 what the quality is this year.

25 So the targets are just a starting point

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2 that we all know may end up not at all representing  
3 the quality this year versus last year.

4 Q. So let me just back up a little bit. Are  
5 the targets -- the targets, as I understand your  
6 testimony, are allocated based on what happened  
7 with last year's class?

8 A. Yes.

9 Q. Docket by docket?

10 A. Sorry. Yeah.

11 Q. Adjusted, perhaps, for any change in the  
12 application numbers this year; is that correct?

13 MS. ELLSWORTH: Objection.

14 A. More or less.

15 Q. Okay. And how? When you say more or  
16 less, what do you mean?

17 MS. ELLSWORTH: Objection.

18 A. We might take a look at, again, look at  
19 what last year's experience with the application  
20 numbers and then the number of admits ultimately,  
21 so at the end of the whole process. And normally  
22 we would simply proportionately use the last year's  
23 admits as a way to get into this year's targets.

24 If there was a variation, you know, the  
25 number of applications, you might increase a target

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2 or decrease a target slightly with that information  
3 in hand.

4 Q. Is it the same -- well, is the projected  
5 yield factor in, to setting the targets?

6 A. Only in the most collective sense, and  
7 that is that we know one year to the next that the  
8 yield in different areas tends to be roughly  
9 similar to the previous year. And we obviously  
10 want very much not to have too many people who end  
11 up saying yes, so that we would be overcrowded.

12 So if you add up, and this is the way it  
13 would work, if you look at the bottom, I suppose,  
14 of how many you admitted last year, the yield in a  
15 funny way would be figured in by literally what  
16 happened last year and then applied proportionately  
17 to what we have in front of us this year. But we  
18 know that yields can vary overall, and they can  
19 vary by docket from year to year.

20 Q. To account for that, do you set a target  
21 that is below the number of seats that you'll have,  
22 based on whatever yield assumption you're applying?

23 A. Well, in all cases, you know, every  
24 docket, again figured out by looking at last year.  
25 But we know that no matter how hard we try,

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2 there'll still be anywhere, you know -- this year,  
3 you know, 16 or 17 percent of the people we  
4 admitted turned us down. And the year before, the  
5 number was more like 21 percent of the people  
6 turned us down.

7 Q. Right. But I guess my --

8 A. So the whole number would always be, of  
9 admits, will always be more than the ones we expect  
10 to show up.

11 Q. Okay. How many seats do you have in a  
12 given class?

13 A. 1,662.

14 Q. Okay. And for regular action, you have  
15 the benefit of the Early Action numbers.

16 Is your yield assumption that you use to  
17 generate the targets, if it comes out right, does  
18 that equal 1,662?

19 MS. ELLSWORTH: Objection.

20 A. We would hope. It's always -- we would  
21 hope to be able to use the waiting list each year.  
22 So I think our hope, let's say in April, adding up  
23 the early admits and the regular action admits, our  
24 hope is that we would end up on May 1st, May 5th,  
25 you know, when we get final responses from people,



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2 any of the buildings near Harvard Yard or in other  
3 locations.

4 Q. How many times has that happened in the  
5 last 10 or 15 years?

6 MS. ELLSWORTH: Objection.

7 A. Once.

8 Q. Just once? Obviously, it's something you  
9 try to avoid?

10 A. Yes.

11 Q. So the targets that get generated through  
12 this series of assumptions and calculations you  
13 just described, those are distributed to each  
14 docket chair?

15 A. Yes.

16 Q. And are those docket chairs, do they  
17 consider those to be hard or soft targets?

18 MS. ELLSWORTH: Objection.

19 A. I would say generally hard.

20 Q. They're expected to come to the full  
21 committee meeting --

22 A. Oh, I see what you're saying. I'm sorry.  
23 When I said hard, I thought you meant difficult to  
24 meet. Sorry.

25 We look -- the way I would look at them is

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2 happened in the previous year's results, what might  
3 have then affected what kinds of target projection  
4 you might have given this year.

5 But, in the end, the docket targets really  
6 don't mean much because, in the end, those  
7 individual candidates -- the strongest ones who  
8 didn't make it, the weakest ones who stayed in, and  
9 frankly, even every person who was admitted in,  
10 let's say -- take regular action as an example --  
11 so even though the subcommittee admitted these  
12 students, that's simply a recommendation.

13 And so, in the end, all of those students  
14 are -- have to be compared against all of the other  
15 people from all the other dockets, and lots of  
16 times there's new information available. You know,  
17 there could be any number of new pieces of  
18 information, new interview or whatever, and that  
19 might make for a different case.

20 So every one ultimately gets compared to  
21 everyone else in the same process that I have  
22 mentioned earlier today, where you would  
23 literally -- if you were, say, the area person for  
24 a candidate from a school, there would be a docket  
25 that people could look at but then all the

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2 THE VIDEOGRAPHER: Time now is 1612. Off  
3 the record.

4 (Proceedings interrupted at 4:12 p.m. and  
5 reconvened at 4:30 p.m.)

6 THE VIDEOGRAPHER: Time now is 1630, and  
7 we're on the record.

8 BY MR. STRAWBRIDGE:

9 Q. Did you discuss your answers with counsel  
10 during the break?

11 A. No.

12 Q. During the full committee meeting, you  
13 received over the course of the process several of  
14 the one-pagers?

15 MS. ELLSWORTH: Objection.

16 A. Two, perhaps, and three, counting at the  
17 end, as I recall.

18 Q. At the beginning of the process, is the  
19 data about the ethnic composition of the class  
20 shared with the full committee?

21 MS. ELLSWORTH: Objection.

22 A. Not necessary.

23 Q. You don't read it at the beginning of the  
24 full committee meeting?

25 MS. ELLSWORTH: Objection.

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2 A. Not in every year or every instance.

3 Q. Do you sometimes do that?

4 A. If there's a variation worth mentioning.

5 Q. And do you also read the information about  
6 the prior year?

7 A. I might.

8 Q. If -- during that process you said you'll  
9 mention if there is a variation from the prior  
10 year?

11 A. I might.

12 Q. And if there are variations in the numbers  
13 compared to the prior year as the process goes  
14 through, will you and Ms. McGrath use that  
15 information to present candidates for  
16 reconsideration by the committee?

17 MS. ELLSWORTH: Objection.

18 A. No.

19 Q. Are you sure about that?

20 MS. ELLSWORTH: Objection.

21 A. Could you define what you mean by "use"?

22 Q. Yes. Would you use the information on the  
23 one-pagers to help you determine whether or not  
24 candidates from a particularly -- from a group that  
25 appears to be particularly underrepresented should

1 FITZSIMMONS

2 be brought back to the committee's attention for  
3 full consideration?

4 MS. ELLSWORTH: Objection.

5 A. Variations of any sort might be worth  
6 mentioning.

7 Q. And so would you mention that in the  
8 process of bringing people back forward to the  
9 committee for full consideration?

10 MS. ELLSWORTH: Objection.

11 A. We might provide this information.

12 Q. And would you provide that multiple times  
13 during the course of a particular full committee  
14 meeting?

15 MS. ELLSWORTH: Objection.

16 A. Not that I recall.

17 Q. If Ms. McGrath recalled doing it multiple  
18 times during a full committee session, would you  
19 disagree with her?

20 MS. ELLSWORTH: Objection.

21 A. I wouldn't really know what she meant by  
22 that.

23 Q. She's in the meetings with you, right?

24 A. She may be in the subcommittee meeting.

25 Q. And she comes to the full committee

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2 meetings, right?

3 A. Yes.

4 Q. She sits in all of them just like you do,  
5 right?

6 MS. ELLSWORTH: Objection.

7 A. She sits in full committee when her  
8 schedule allows.

9 Q. And, I mean, is that most of the full  
10 committee meetings?

11 MS. ELLSWORTH: Objection.

12 A. She sits in a large number of the full  
13 committee meetings.

14 Q. As the process goes on, is the overall  
15 ethnic composition of the class as reflected in the  
16 one-pagers shared with the full committee after the  
17 first -- after the beginning?

18 MS. ELLSWORTH: Objection.

19 A. Not usually.

20 Q. If Sally Donahue testified that it is,  
21 would you disagree with her?

22 MS. ELLSWORTH: Objection.

23 A. I'm not sure of the context of her  
24 evaluation.

25 Q. When you say not usually, does that mean

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2 Q. Okay. If Ms. McGrath testified that they  
3 were password-protected, do you have any reason to  
4 disagree with that?

5 MS. ELLSWORTH: Objection.

6 A. I'm simply not aware of it.

7 Q. Are the ethnicity stats that are used,  
8 that are prepared in the one-pager used in order to  
9 ensure that the committee does what it can to give  
10 candidates of various ethnicities full  
11 consideration and avoid any unnecessary variation  
12 from the prior year's numbers?

13 MS. ELLSWORTH: Objection.

14 A. No.

15 Q. If Ms. McGrath testified that the  
16 committee -- that she desires to make sure that the  
17 committee has a chance to give full consideration  
18 and avoid any unnecessary variation, would you  
19 disagree with that?

20 MS. ELLSWORTH: Objection.

21 A. Yes.

22 Q. How long has she been in the office?

23 MR. LEE: You asked that two hours ago.

24 It's the same 20 years. Really? Come on. Please.

25 MR. STRAWBRIDGE: Mr. Lee, are you

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2 defending the deposition?

3 MR. LEE: No, but, you know, this is  
4 supposed to be a professional --

5 MR. STRAWBRIDGE: Would you like to go off  
6 the record?

7 MR. LEE: No. I'd actually like this to  
8 stay on the record. He's going to be here for ten  
9 hours. Could you just not ask the same questions  
10 again and again, please, as a professional courtesy  
11 to all of us.

12 MR. STRAWBRIDGE: I'll ask the questions  
13 as I see fit, Counsel. Thank you.

14 MR. LEE: Well, you know, I guess we'll  
15 see the judge on this after the deposition.

16 Q. How long has she been in the admissions  
17 office?

18 MS. ELLSWORTH: Objection.

19 A. For much of the time I've been dean.

20 Q. And why do you think she would be wrong?

21 A. I don't know.

22 Q. Are you familiar with what's known as the  
23 lopping process?

24 A. Yes.

25 Q. And what is the lopping process?



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2 A. It's part of the full committee where we  
3 ensure that we send out the number of admissions  
4 that will, we hope, not overcrowd our class.

5 Q. Is it the point where decisions have to be  
6 made to pare back the class to get to the target  
7 number?

8 MS. ELLSWORTH: Objection.

9 A. It's one way of looking at it.

10 Q. Are lops distributed evenly amongst the  
11 dockets in proportion to the number of admits who  
12 are beyond the target?

13 A. That would be the goal.

14 Q. Every subcommittee receives a lop number?

15 A. Yes.

16 Q. And is required to fill out a form  
17 recommending lops?

18 A. Yes.

19 Q. Does that form request information about  
20 the ethnicity of the candidates who are being  
21 proposed for lops?

22 A. As I recall.

23 (Exhibit 6, HARV00004924 - 4927, marked for  
24 identification.)

25 MR. STRAWBRIDGE: Look at this document and

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2 strong students from all backgrounds are attracted  
3 into the Harvard applicant pool and that we would  
4 have the opportunity to review their applications  
5 using ethnicity as one factor among many.

6 And thinking about the importance of  
7 having people from a wide variety of ethnic  
8 backgrounds in our class so that they can educate  
9 each other to be better citizens and citizen  
10 leaders and then, we hope, be strong citizens and  
11 citizen leaders after graduation from Harvard.

12 So that as we review each applicant from  
13 the groups we have been fortunate enough to get as,  
14 you know, into our pool, we then look at background  
15 as one factor among many as we make our decisions.

16 Q. Why do you track yield rates by ethnicity?

17 MS. ELLSWORTH: Objection.

18 A. It's simply important for us to understand  
19 not just what might happen if a class turns out to  
20 be a particular -- have a particular composition  
21 ethnically, but we would look at other factors,  
22 geography, for example, as well.

23 So it wouldn't simply be the only factor.  
24 But we, again -- once the meetings, you know, are,  
25 you know, completed, we, you know, we want to make,

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2 example, as an example, people from the South tend  
3 to yield at a lower rate. If you had more people  
4 from the South, you could then say you might feel  
5 free to admit more people right at the end of the  
6 process, if that answers the question.

7 Q. Are you aware of any charts like this that  
8 track yield rates by geographic region?

9 MS. ELLSWORTH: Objection.

10 A. That's information that we certainly are  
11 aware of.

12 Q. And so your testimony is that there are  
13 similar charts like this that break it down by  
14 geographic region, what the yield rate is?

15 MS. ELLSWORTH: Objection.

16 A. I have that information. Some of it may  
17 be on the one-pager.

18 Q. Is there -- what have you done in the past  
19 when you've seen the number of Asian Americans in  
20 the best class that you've admitted has taken a  
21 significant jump, by, like, ten percent? How have  
22 you addressed that in a given year, given your  
23 yield calculations?

24 MS. ELLSWORTH: Objection.

25 A. I'm sorry. Could you repeat that

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2 article?

3 A. That might have been the case.

4 Q. All right. So just to make sure I  
5 understand, is your testimony that you didn't make  
6 a request to OIR after Mr. Unz's article to look  
7 into Asian American discrimination, or is it simply  
8 that you don't remember making a request?

9 MS. ELLSWORTH: Objection.

10 A. I don't remember making a specific request  
11 to them about Asian American admissions at that  
12 time.

13 Q. Do you remember making a request to them  
14 about -- a general request to them about Asian  
15 American admissions?

16 MS. ELLSWORTH: Objection.

17 A. What's the time frame again, please?

18 Q. After Mr. Unz published his article.

19 MS. ELLSWORTH: Objection.

20 A. I don't remember whether we made a  
21 specific request to them for such information.

22 Q. Is it possible that you did?

23 MS. ELLSWORTH: Objection.

24 A. That's hard to say.

25 Q. You can't say one way or another?

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2 you think would be sufficient to make you concerned  
3 and conduct a further investigation?

4 MS. ELLSWORTH: Objection.

5 A. We are very careful in our admissions  
6 process to review each application with great care  
7 of students from all backgrounds.

8 And we discuss these applicants  
9 holistically and with all the information that we  
10 have with our 40 admissions committee members and  
11 faculty members, and we would always be vigilant  
12 about any suggestion of discrimination against any  
13 person.

14 Q. Do you think that your testimony about how  
15 you reacted to these reports and the follow-up that  
16 did or did not happen is consistent with your  
17 statement just now that you would always be  
18 vigilant about allegations of discrimination?

19 MS. ELLSWORTH: Objection.

20 A. Yes.

21 Q. Do you think you exercised vigilance, sir?

22 MS. ELLSWORTH: Objection.

23 A. Yes.

24 Q. And do you think it was consistent with  
25 the exercise of vigilance not to send any of this

## 1 CERTIFICATE

2 Commonwealth of Massachusetts  
3 Suffolk, ss.  
4

5 I, Dana Welch, Registered Professional  
6 Reporter, Certified Realtime Reporter and Notary  
7 Public in and for the Commonwealth of  
8 Massachusetts, do hereby certify that WILLIAM  
9 FITZSIMMONS, the witness whose deposition is  
10 hereinbefore set forth, was duly sworn by me and  
11 that such deposition is a true record of the  
12 testimony given by the witness.

13 I further certify that I am neither related  
14 to nor employed by any of the parties in or counsel  
15 to this action, nor am I financially interested in  
16 the outcome of this action.

17 In witness whereof, I have hereunto set my  
18 hand and seal this 15th day of August, 2017.  
19

20 \_\_\_\_\_  
Dana Welch

21 Notary Public

My commission expires:

22 October 6, 2017  
23  
24  
25